IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4878 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL SHANTABEN MOHANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4878 of 2003

MR BIPIN MEHTA FOR MS RUKHSANA M PATHAN for Petitioner No. 1

MS REETA CHANDARANA, AGP for Respondent No. 1,3

MR ANANT S DAVE for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 29/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner has prayed for being granted family pension on the basis of

the services put in by her deceased husband in different panchayats, lasty with Bhalej Gram Panchayat. The case of the petitioner is that her husband served from 1946-47 to 1958 and he had, therefore, put in services in excess of 10 years and the petitioner, is therefore, entitled to receive family pension on the basis of the services rendered by her husband as mentioned above.

2. The respondent No.1 has filed affidavit in reply in which it is specifically stated that the resolution with respect to grant of pension to the staff of school Board was introduced with effect from 1.4.61 and, therefore, the effective date of commencement of pension would be from 1.4.61 and onwards and only those persons who were in service as on 1.4.61 would be entitled to draw pension. It is further stated that the husband of the petitioner worked only till 1957 and therefore he was not covered under the pension scheme and the petitioner therefore cannot be granted family pension. There were certain other disputes raised in the affidavit in reply with which we are not directly concerned.

3. The crucial question in the present petition is whether the petitioner is entitled to family pension when her husband was no longer in service in the year 1961 when the pension scheme was introduced. Learned advocate for the petitioner has not been able to dispute the averments made by the respondent No.1 in the affidavit in reply to the effect that the pension scheme was available only with effect from 1.4.61 and would cover only those employees who were in service as on that date. There is also no serious dispute about the fact that the husband of the petitioner was in service only till 1957 and not thereafter. The contention of the respondent, therefore, that the husband of the petitioner was not covered by the pension is therefore correct. Since the husband of the petitioner was not covered by the pension scheme, obviously, the petitioner would not be entitled to receive family pension and the decision of the respondents not to grant family pension to the petitioner, therefore, cannot be interfered with.

4. In the result, the petition fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)